

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (GBD) (SN)
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This document relates to:

Ashton, et al. v. Islamic Republic of Iran, No. 02-cv-6977 (GBD) (SN)

Bauer, et al. v. Islamic Republic of Iran, No. 02-7236 (GBD) (SN)

**DECLARATION OF DOROTHEA M. CAPONE, ESQ.
IN SUPPORT OF PLAINTIFFS' MOTION TO CORRECT**

Dorothea M. Capone, Esq., hereby states under penalty of perjury that:

1. I am an attorney representing the Plaintiffs in the above-captioned matters who are represented by Baumeister & Samuels, P.C. ("*Bauer*" Plaintiffs), and I submit this Declaration in support of the *Bauer* Plaintiffs' Rule 60(a) Motion to Correct clerical and/or typographical errors to Exhibits A and C-1 to the July 29, 2022 Declaration of Dorothea M. Capone, Esq. and the Proposed Final Judgment filed at ECF Nos. 8299-1, 8299-3, 8300-1, and 8300-3, 02-cv-6977, ECF Nos. 1702-1, 1702-3, 1703-1 and 1703-3, 02-cv-7236, ECF Nos. 168-1, 168-3, 169-1, and 169-3.¹

2. The source of my information and the basis for my belief in my statements contained herein are my personal involvement in this matter, my firm's representation of the *Bauer* Plaintiffs in connection with the September 11, 2001 terror attacks, other court records relating to the multi-district litigation to which the *Bauer* Plaintiffs are parties, conversations had

¹ References to MDL docket entries found at 03-md-1570 (S.D.N.Y.) are noted only by ECF number and references to individual civil case docket entries are preceded by the case number.

with family members of the *Bauer* Plaintiffs, file records, and conversations with counsel to other September 11th plaintiffs.

3. On July 29, 2022, the *Bauer* Plaintiffs filed a Motion for Final Judgment against Defendants the Taliban and Muhammad Omar supported by my Declaration with exhibits (“Capone Declaration”) and a Proposed Final Judgment on Behalf of *Bauer* Plaintiffs against said defendants with accompanying exhibits. ECF Nos. 8298, 8299, 8299-1, 8299-2, 8299-3, 8299-4, 8299-5, 8299-6, 8299-7, 8299-8, 8300, 8300-1, 8300-2, 8300-3, and 8300-4, 02-cv-6977, ECF Nos. 1701, 1702, 1702-1, 1702-2, 1702-3, 1702-4, 1702-5, 1702-6, 1702-7, 1702-8, 1703, 1703-1, 1702-2, 1703-3, and 1703-4, 02-cv-7236, ECF Nos. 167, 168, 168-1, 168-2, 168-3, 168-4, 168-5, 168-6, 168-7, 168-8, 169, 169-1, 169-2, 169-3 and 169-4.

4. Today I became aware of minor clerical and/or typographical errors in the exhibits supporting the *Bauer* Plaintiffs motion which is pending before this Court. These errors are set forth below.

(a) typographical error in line 16 of Exhibit A to the Capone Declaration, and line 16 of Exhibit A to the Proposed Final Judgment in the column labeled “Total Compensatory Damages.” The amount was incorrectly listed as \$10,826,125.00 instead of \$10,026,125.00. As a result of that typographical error, the amount listed in each of the aforementioned Exhibits on line 16, under the column of “Treble Damages Sought Here Under ATA” is also incorrect. The correct amount of treble damages is \$30,078,375.00. In addition, because of that typographical error, the total amount of compensatory damages and treble damages are incorrect. The correct total amount of compensatory damages for Exhibit A is \$590,849,067.00, and the correct total amount for treble damages \$1,772,547,201.00;

(b) typographical error in line 107 of Exhibit C-1 to the Capone Declaration, and line 107 of Exhibit C-1 to the Proposed Final Judgment in the columns labeled “Prior Solatium Award Amount” and “Total Compensatory Damages.” The solatium damages refer to the claim for the Estate of Thomas P. Johnson, who was the sibling of 9/11 decedent Scott Johnson. The amounts in these columns were incorrectly listed as \$8,500,000.00 instead of \$4,250,000.00, which is the correct total of solatium damages for a sibling. Because of that typographical error, the amount listed in each of the aforementioned Exhibits on line 107, under the column of “Treble Damages Sought Here Under ATA” is also incorrect. The correct amount of treble damages is \$12,750,000.00;

(c) in Exhibit C-1 to the Capone Declaration, and Exhibit C-1 to the Proposed Final Judgment, Plaintiff Jennifer Price-Selkever, located at line 159, was inadvertently included in this exhibit. Plaintiff Jennifer Price-Selkever is correctly and properly listed in Exhibit B to the Capone Declaration and in Exhibit B to the Proposed Final Judgment. Because of the above-mentioned clerical error and the typographical error identified in (b) above, the total amount listed in Exhibit C-1 to the Capone Declaration and Proposed Judgment for solatium damages and treble damages are incorrect. The correct total amount of solatium damages for the aforementioned exhibits is \$1,499,750,000.00, and the correct total amount of treble damages is \$4,499,250,000.00.

5. The corrections requested by *Bauer* Plaintiffs are simply clerical in nature and will not in any way change the Court's disposition of their pending motion. Fed. R. Civ. P. Rule 60(a) applies primarily to errors or omissions committed by an attorney or the court which are not apparent on the record. *See In re Merry Queen Transfer Corp.*, 266 F. Supp. 605 (E.D.N.Y. 1967). To aid the Court in its consideration of the *Bauer* Plaintiffs' pending Motion for Final Judgment against Defendants the Taliban and Muhammad Omar, attached as Exhibit 1 to this Declaration are corrected Exhibits A and C-1 that may be respectfully substituted in place of the those submitted with the July 29, 2022 Capone Declaration and the Proposed Final Judgment found at ECF Nos. 8299-1, 8299-3, 8300-1, and 8300-3, 02-cv-6977, ECF Nos. 1702-1, 1702-3, 1703-1 and 1703-3, 02-cv-7236, ECF Nos. 168-1, 168-3, 169-1, and 169-3.

6. For the foregoing reasons, *Bauer* Plaintiffs respectfully request that the Court grant the within motion and Order that the corrected Exhibits A and C-1 attached hereto be substituted in place of Exhibit A and C-1 to the Declaration of Dorothea M. Capone, Esq., and Exhibit A and C-1 to the Proposed Final Judgment.

Dated: New York, New York
August 16, 2022

/s/ Dorothea M. Capone
Dorothea M. Capone